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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/273,450	03/22/1999	EMMANUEL KANTERAKIS	GBTI54US	7148

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EXAMINER

BOCURE, TESFALDET

ART UNIT

PAPER NUMBER

2631

DATE MAILED: 10/21/2002

#19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/273,450

Applicant(s)

KANTERAKIS ET AL.

Examiner

Tesfaldet Bocure

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 7,9,10,12,14,15,18,20,21,24,27,29 and 33-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 7,9,10,12,14,15,18,20,21,24,27,29,33-42 and 47-49 is/are allowed.
- 6) ☐ Claim(s) 43-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 16. 6) ☐ Other: \_\_\_\_\_

***Information Disclosure Statement***

1. The Examiner has approved the Information disclosure statement received on June 20, 2002.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 43,44 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Ozluturk et al. (US patent number 5,841,768, of a record).
3. Ozluturk et al. teaches a spread spectrum communication system for controlling the initial power ramp-up comprising: a base station transmitting a pilot signal broadcasted to all the mobile station (see col. 3, lines 59-57); mobile station receiving the pilot signal and using it for acquisitions, synchronization, as well as determining the parameters of the adaptive matched filter; mobile station a (16 in figure 1 and 2) transmits an initial minimum power level that is guaranteed to be lower than the required power level by the base station, and continues transmitting an increased power level until base station sends an indication (claimed acknowledgment); and mobile station transmitting data thereafter as in claims 43,44 and 46. See also the abstract and summary of the invention in col. 3 and figure 4.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ozluturk et al. (US patent number 5,841,768, of a record).

Ozluturk et al. teaches a spread spectrum communication system for controlling the initial power ramp-up comprising: a base station transmitting a pilot signal broadcasted to all the mobile station (see col. 3, lines 59-57); mobile station receiving the pilot signal and using it for acquisitions, synchronization, as well as determining the parameters of the adaptive matched filter; mobile station a (16 in figure 1 and 2) transmits an initial minimum power level that is guaranteed to be lower than the required power level by the base station, and continues transmitting an increased power level until base station sends an indication (claimed acknowledgment); and mobile station transmitting data thereafter as in claim 44. See also the abstract and summary of the invention in col. 3.

What Ozluturk et al. fails to teach is that the mobile station ceases transmission of short codes indicating the power ramp if no acknowledgment is received after maximum repetition. However, it is obvious and well known in accessing method that the system should have time limit as to when to try to get access or

not. In other word, the system cannot go indefinitely looking for access code if not received within given time frame.

Therefore, it would have been obvious to one of an ordinary skill in the art to cease transmission of power ramp codes when the mobile station at the time the invention was made does a maximum attempt.

### ***Response to Amendment***

In response to applicant's argument with respect to claim 45 that:

Claim 45 stands rejected less than 35 U.S.C. § 103 as obvious over the Ozluturk Patent. The Examiner acknowledges that the Ozluturk Patent does not disclose terminating preamble transmission after a maximum number of such transmissions. The rejection includes an allegation that imposing a time limit on access transmissions is well known and therefore it would have been obvious to impose a time limit by ceasing "power ramp codes" (presumably referring to the claimed preamble transmissions) after a maximum number of attempts.

As indicated in the office action above, it is obvious and well known in accessing and handshaking method that the system should have time limit as to when to try to get access or not. It should also be noted that the system couldn't go forever in looking for acknowledgment in order to access without have a time limit,

In response to applicant's argument with reject to claims 43 and 44 that:

Applicants respectfully submit that claims 43-46 and amended claims 47-49 are neither anticipated nor obvious over the Ozluturk Patent and therefore patentably distinguish over the art.

There are several features of the access methodology disclosed in this case that distinguish over the Ozluturk Patent, which are specified in different ones of the claims (47-49) that are still at issue in this case. For example, as disclosed in this case, each preamble transmission is at a discretely different power level. Application Fig. 6 shows examples of preamble transmissions at discretely different power levels  $P_0$  through  $P_3$ . Also, there is a separation or delay between preamble transmissions while the mobile station essentially listens for the acknowledgement. Application Fig. 6 shows examples of four preamble transmissions separated by pilot signal transmissions (P), although there could be silence (no signal transmitted) in the intervening intervals (see application page 17, lines 17-22). The station sends the next preamble transmission only if the intervening period expires without receiving an appropriate acknowledgment. By comparison, Ozluturk teaches continuously repeating transmissions and a linear continuous power ramp-up. Continuous transmission and ramp-up does not provide preambles, each of which is completely at one of the different levels, or separations between preamble transmissions.

Another disclosed distinction is that the access preamble here is itself a form of code data (e.g. a signature) that is spread in essentially the same manner as other data. For example, Fig. 4 shows spreading of the preamble (see also p. 9, lines 12-20); and Fig. 3 shows the matched filter 315 de-spreading signals before processing for preamble recognition (see also p. 7, lines 15-20). Within one access burst the preambles may all be the same, or they may differ (see p. 13, lines 5-7).

***By comparison, Ozluturk teaches simply transmitting spreading codes without any data carried on the short code or access code transmissions. Transmission of a spreading code only is not a transmission of a spread access preamble.*** The modifications proposed in the obviousness rejections do not address any of these distinctions. It is respectfully submitted that each of claims 43-49 now specify one or more of these distinctions. The language of these claims and the specific differences over Ozluturk are discussed below. Independent claims 43 and 44 specify transmission of each preamble at one "level." Stated another way, the entire first preamble transmission is at a one "first power level," and the entire second preamble transmission is at a one "second power level" (see e.g. claim 43, lines 10-15).

Claim 44 specifies transmitting a preamble at a lower level and repeating the transmitting step at a new set level (lines 9-10 and 14-15). The second (or new set) power level is higher than the first power level (or increased). A continuous ramp-up extending through a preamble transmission, as in Ozluturk, would result in a preamble transmission that continues to increase (e.g. in an inclined linear manner) during the respective preamble transmission, not a complete transmission of a preamble at either "level," as claimed. Attention is directed to Figs. 5 and 7 of the Ozluturk Patent. The express claim language therefore excludes continuous power ramp up through one or more preamble transmissions, e.g. as a continuously increasing signal during each ongoing spreading code transmission, as is apparently the case in the Ozluturk system. Also, claims 43 and 44 both expressly require retransmission upon lack of an acknowledgement within some time, "after" a preamble transmission. This express claim language requires some delay separating preamble transmissions. Such a claim requirement does not encompass the continuous transmissions taught by Ozluturk. Continuous transmission lacks some time of separation "after" a preamble transmission, during which the station waits and listens for an acknowledgement. Since the disclosure in the Ozluturk Patent fails to satisfy at least two express limitations of each of independent claims 43 and 44, Ozluturk does not anticipate those claims or the dependent claim 46. The anticipation rejection of claims 43, 44 and 46 therefore is improper and should be withdrawn.

Applicant's reference to figures 5 and 7 and as noted by the Applicant is one of the many embodiments disclosed in Ozluturk's reference. Examiner would like to bring Applicant's attention to figure 4, which is a separate embodiment from that of figures 5 and 7, where the system does not transmit a long access codes once an acknowledgment is received from the base station. In steps 112, 114 and 116, the subscriber station ceases increasing transmission power (step 114) and continue with call setup by sending other messages once the acknowledgment (112) is received from the base station.

As to Applicant's argument with respect to spreading the preamble, such a limitation is not claimed in claims 43 and 44.

In response to applicant's argument with respect to claims 47 and 49 that:

Claims 47 and 49 have been amended to more clearly point out certain distinctions over the art. Specifically, claims 47 and 49 expressly require that the power levels of the preamble transmissions are discretely different. These amended independent claims also require that the mobile transmission involve **a spreading of an access preamble**. As noted, Ozluturk uses a continuous ramp-up instead of discrete power levels. Also, the short code and the access code used by Ozluturk **do not spread or carry any type of preamble (or any other form of data)**. Hence, Ozluturk also does not spread an "access preamble" as required by claims 47 and 49.

Since the disclosure in the Ozluturk Patent fails to satisfy at least two express limitations of each of independent claims 47 and 49, Ozluturk does not anticipate those claims or claim 48, which depends from 47. The anticipation rejection of claims 47-49 therefore is improper and should be withdrawn.

Applicants therefore submit that claims 43-49 define novel and unobvious subject matter.

Examiner Agrees to the applicant's assertion that Ozluturk Patent does not teach that the access code (claimed preamble spreaded in claims 47 and 49) ~~not~~. Therefore the rejections to those claims have been withdrawn, and the claims are allowable.

### Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tesfaldet Bocure whose telephone number is (703) 305-4735. The examiner can normally be reached on Mon-thur (7:30a-5:00p) & Mon.-Fri (7:30a-5:00p).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on (703) 305-4378. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 305-3988 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

T.Bocure  
October 18, 2002

Tesfaldet Bocure  
Primary Examiner  
Art Unit 2631

